

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with)	
Enhanced E911 Emergency Calling Systems)	
)	
E911 Phase II Compliance Deadlines for Non-)	
Nationwide Tier III CMRS Carriers)	

**Further Supplement to South No. 5 RSA LP Petition and Request
For Additional Waiver of Section 20.18(g) of the Commission's Rules**

South No. 5 RSA LP d/b/a Brazos Cellular Communications, LTD ("Brazos"), by its attorneys, hereby supplements the record with regard to its request for a temporary waiver of Section 20.18(g) of the Commission's rules and the modifying provisions of the Commission's Order in *Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket 94-102, Order To Stay (rel. July 26, 2002), and requests an additional extension of time to implement Phase II of Enhanced 911 ("E911") services. Brazos is a Tier III Commercial Mobile Radio Service ("CMRS") carrier who has selected a handset-based Phase II E911 solution. Brazos requested an extension of time, under the provisions of the Commission's *Stay Order*, to follow a phased in implementation schedule of activation of location-capable handsets without respect to any Public Safety Answering Point ("PSAP") request for deployment Phase II E911 services.¹ As indicated below, Brazos is

¹ *In re Revision of the Commission's Rules To Ensure Compatibility with Enhance 911 Emergency Calling Systems E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket No. 94-102. FCC 03-241 (rel. October 10, 2003) ("*Stay Order*").

undertaking concrete steps toward E911 implementation, has documented its efforts, and has a clear path to full compliance.²

Brazos will deploy a handset-based solution to deliver Phase II E911 services over a Code Division Multiple Access (“CDMA”) digital network. Brazos planned to have the CDMA network system operational and to begin to sell and activate automatic location identification (“ALI”)-capable handsets by June 30, 2004. Despite good-faith efforts, it does not appear likely that Brazos will be able to deploy the new system and ALI-capable handsets by that time. Nor is it likely, as previously stated, that penetration of location-capable handsets will reach 95 percent by December 31, 2005. Brazos asks to be afforded an additional 12 months to deploy its CDMA network and comply with the Phase II implementation requirements for handset activation. In support hereof, the following is respectfully shown:

I. Background

Brazos is a Tier III, rural provider of CMRS, offering cellular radiotelephone services in Texas RSA 5 B2. Brazos has maintained with the Commission a continuous and complete record of its status and progress, beginning with its E911 solution election report through its most recent filing in November, 2003, of a Supplement to its Petition for Waiver. Brazos explained that it abandoned consideration of a network-based Phase II E911 solution due to poor prospects for meeting the Phase II location accuracy requirements of Section 20.18(h)(1) of the Commission’s rules as a result of the minimal cell contour overlap in Brazos’ rural market. As a TDMA-based

² Public Notice titled “Wireless Telecommunications Bureau Provides Guidance on Filings by Small and Mid-Sized Carriers Seeking Relief from Wireless E911 Phase II Automatic Location Identification Rules” released October 19, 2001 (footnotes omitted), citing the Commission’s *Fourth Memorandum Opinion and Order* in CC Docket No. 94-102, 15 FCC Rcd 17442, at 17457 (2000).

carrier, Brazos was without the option of implementing a handset-based solution. Brazos made the decision to convert to CDMA but has faced delays out of its control in entering into a CDMA roaming agreement with a large wireless carrier. While transition to CDMA had been expected to be completed by the end of the second quarter of 2004, installation has been delayed.

A. Deployment of a CDMA Network

Brazos will implement a CDMA overlay as part of an ongoing effort to adapt to current market conditions, to offer upgraded service features, and to be a participant in roaming arrangements with one or more larger wireless carriers. Brazos has not pursued the CDMA deployment in part because local PSAPs are not yet ready to process the caller location data that Brazos would generate on its CDMA system. When installed the CDMA system will serve as a platform for the delivery of E911 Phase II technical data to the local PSAPs.

B. Introduction of Location-Capable Handsets

The handset-based Phase II solution to be deployed by Brazos must be deployed system-wide before reliable Phase II data can be delivered from ALI-capable handsets to local PSAPs. Following completion of CDMA network testing, Brazos will begin selling and activating ALI-capable handsets. Brazos requests that the deadlines to begin selling and activating handset, and to ensure that 25 percent of the handsets sold and activated are ALI-capable, be extended to July 1, 2005; that the deadline for ensuring that 50 percent of the handsets sold and activated are ALI-capable be extended to September 1, 2005; and that the deadline for ensuring that 100 percent of the handsets sold and activated are ALI-capable be extended to December 31, 2005. Brazos' request is specific and limited in scope, its waiver request intended to last only until such time as it is able to complete the CDMA network overlay.

C. Coordination with PSAPs

Brazos remains in contact with the local PSAPs in its service area through the local Councils of Government (“COGs”), who coordinate E911 efforts in the state of Texas. The COGs have been kept aware of Brazos’ schedule and have not, to date, indicated to Brazos that the local PSAPs are ready to receive and process Phase II E911 data. No requests for Phase II data have been received by Brazos from local PSAP entities. The COGs and PSAPs are aware that the transition of Brazos’ subscriber base to ALI-capable handsets will proceed over a scheduled period of time. In particular, customers using TDMA and analog phones are expected to gradually convert to using ALI-capable CDMA devices.

D. The Path to Compliance

Brazos has shown good faith in meeting the Commission’s E911 requirements by implementing Phase I services for all Phase I capable PSAPs. Brazos will provide Phase II services as soon as its CDMA overlay is complete and a local PSAP is ready to accept the location data. Brazos requests from the Commission up to a 12-month additional extension of time to comply with each of the handset activation requirements. During the months following the CDMA conversion, Brazos expects its customers to pursue a natural progression of equipment upgrades, transitioning from TDMA and analog handsets to handsets that will be compatible with the CDMA Phase II data delivery system. While it appears unlikely that Brazos’ system will reach a full 95 percent penetration level of ALI-capable handsets by December 31, 2005, Brazos refrains herein from seeking formal relief from the penetration requirement. Brazos will make its best efforts to encourage subscribers to convert from TDMA and analog phones as

quickly as possible. Additional relief will be sought only if Brazos' developing situation necessitates an additional request.

II. Discussion

Generally, the Commission's rules may be waived when there is good cause shown³ and "when special circumstances warrant deviation from the general rule, and such deviation will serve the public interest."⁴ Brazos presents herein a waiver request that is specific, focused and limited in scope. The scope of the request is limited to Section 20.18(g) of the Commission's rules, as modified by the *Order To Stay*. Brazos has made good faith efforts to comply with the other sections of Section 20.18 by implementing the Commission's Phase I requirements, and seeks only a temporary waiver permitting Brazos additional time to comply with the Phase II ALI-capable handset activation requirements.

Brazos' request is structured with a "clear path to compliance."⁵ Rather than request a "broad, generalized waiver"⁶ or an indefinite extension, Brazos proposes a schedule conducive to its circumstance as a rural carrier deploying a handset-based location technology during a digital overlay transition.

The public policy behind the Commission's E911 rules is to meet important public safety needs as quickly as reasonably possible.⁷ Allowing Brazos to sell and activate ALI-capable

³ 47 C.F.R. § 1.3.

⁴ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, at 17457; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁵ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, at 17457, para. 44.

⁶ Id.

⁷ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, at 17449.

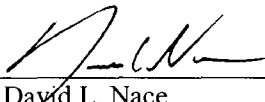
handsets on a deferred schedule will serve this objective. The deployment obstacles faced by Brazos are not of its own making, and the PSAPs are not yet ready to process Phase II information. Under these circumstances, the timetable proposed herein is a reasonable means by which Brazos will achieve E911 Phase II compliance.

III. Conclusion

For the reasons set forth above, Brazos requests a temporary waiver of Section 20.18(g) of the Commission's rules. The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver. Accordingly, Brazos requests grant of a waiver and temporary extension of up to 12 months, as proposed.

Respectfully submitted,

SOUTH NO. 5 RSA LP

By: 

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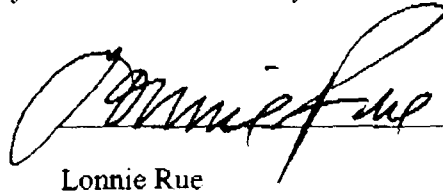
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June 8, 2004

DECLARATION

I, Lonnie Rue, do hereby declare under penalty of perjury the following:

1. I am the Assistant Manager and Chief Financial Officer of South No. 5 RSA Limited Partnership d/b/a Brazos Cellular Communications, Ltd.
2. I am familiar with the facts contained in the foregoing "Further Supplement to South No. 5 RSA LP Petition and Request For Additional Waiver of Section 20.18(g) of the Commission's Rules," and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.



Lonnie Rue

Date: 6-8-04

CERTIFICATE OF SERVICE

I, Daniel Ladmirault, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 8th day of June, 2004, sent by U.S. mail, first-class delivery, a copy of the foregoing Petition to the following:

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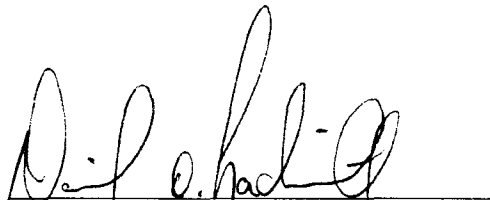
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